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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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JAMES W. SMITH,  
*Complainant,*

v.

MANCHESTER COMMUNITY SCHOOL BD. OF  
TRUSTEES,  
*Respondent.*

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Formal Complaint No.  
21-FC-110

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Luke H. Britt  
Public Access Counselor

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This advisory opinion is in response to a formal complaint alleging the Board of Trustees for Manchester Community Schools violated the Open Door Law.<sup>1</sup> Attorney Mark Frantz filed an answer on behalf of MCS. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on August 4, 2021.

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<sup>1</sup> Ind. Code § 5-14-1.5-1 to -8.

## **BACKGROUND**

In this case we consider whether a school board took final action outside of a public meeting in violation of the Open Door Law (ODL).

On July 8, 2021, the Board of Trustees for Manchester Community Schools (Board) held an executive session to interview prospective employees, during which the Board discussed hiring an interim superintendent. Five days later, the Board held a regularly scheduled meeting where it approved a contract for the interim superintendent.

James W. Smith (Complainant) contends that the Board finalized and approved an agreement to hire the interim superintendent at the executive session on July 8 because the contract indicated the effective date of the employment contract was July 9, 2021.

On September 7, 2021, MCS filed an answer to Smith's complaint denying the Board violated the Open Door Law. MCS does not dispute that the Board held an executive session on July 8, 2021, to discuss prospective employees. The employee considered was a contractor of a placement agency for interim superintendents. The Board received a proposed fee-for-services agreement from the placement agency for review prior to the Board's meeting. Notably, the proposed agreement included a date of July 9, 2021.

MCS argues the date for the contract was filled in by the staffing agency, but not officially executed by the Board until voted upon in the subsequent meeting.

## ANALYSIS

### 1. The Open Door Law

The Open Door Law (ODL) requires public agencies to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. Ind. Code § 5-14-1.5-1. As a result, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. *See* Ind. Code § 5-14-1.5-3(a).

Manchester Community Schools (MCS) is a public agency for purposes of the ODL; and thus, is subject to the law's requirements. Ind. Code § 5-14-1.5-2. Moreover, the MCS Board of Trustees (Board) is a governing body for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b).

As a result, unless an exception applies, all meetings of the school board must be open at all times to allow members of the public to observe and record.

#### 1.1 ODL definitions

Under the ODL, "meeting" means "a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business." Ind. Code § 5-14-1.5-2(c).

"Official action" means to: (1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5)

make decisions; or (6) take final action. Ind. Code § 5-14-1.5-2(d). Notably, the ODL defines “final action” as “a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance or order.” Ind. Code § 5-14-1.5-2(g). The ODL also mandates a governing body to take all final action at public meeting. *See* Ind. Code § 5-14-1.5-6.1(c). Additionally, “public business” means “any function upon which the public agency is empowered or authorized to take official action.” Ind. Code § 5-14-1.5-2(e).

The notable exception to the Open Door Law is called an executive session. Certain sensitive subjects may be discussed behind closed doors. Those subject matters and the procedure for noticing executive sessions is found at Indiana Code section 5-14-1.5-6.1.

## **2. Smith’s claim**

One of the subject matters authorized for an executive session is to receive information about and interview prospective employees. Ind. Code § 5-14-1.5-6.1(b)(5).

Smith does not question the propriety of the executive session, but whether the Board impermissibly took final action during the gathering. The Open Door Law explicitly prohibits final action during an executive session. Ind. Code § 5-14-1.5-6.1(c)

Based on the information provided, it does not appear the Board ratified and executed the agreement during the executive session. The subsequent vote at the next public meeting demonstrates this. The fact that the agreement was merely backdated by the contractor does not indicate an Open Door Law violation.

### **CONCLUSION**

Based on the foregoing, it is the opinion of this office that the Board of Trustees for Manchester Community Schools did not violate the Open Door Law.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned to the right of the conclusion text.

Luke H. Britt  
Public Access Counselor